

INTRADEPARTMENTAL CORRESPONDENCE

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TO: Chief of Police

FROM: Board Members, Use of Force Board

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OFFICE OF THE INSPECTOR GENERAL

SUBJECT: MINORITY OPINION-OFFICER INVOLVED SHOOTING
FID NO. 028-19

On May 19th, 2020, a Use of Force Review Board was convened to evaluate and render a recommended finding for Force Investigation Division (FID) No. F028-19. The deliberation resulted in a minority opinion for the recommended drawing and exhibiting findings for Officer Sanchez, Serial No. 41084. The Use of Force Review Board was comprised of the following members:

Chair: Assistant Chief Beatrice Girmala, Serial No. 24916
Office of Operations: Assistant Chief Robert Arcos, Serial No. 26185
Police Science and Training Bureau: Deputy Chief Martin Baeza, Serial No. 26624
Bureau: Deputy Chief Regina Scott, Serial No. 25512
Peer Member: Officer Nicolas Grace, Serial No. 41292

This minority opinion respectfully offers the rationale for a dissenting opinion with regards to the drawing and exhibiting being out of policy for Officer Sanchez, Serial No. 41084.

ANALYSIS

In this incident, off-duty Los Angeles Police Officer Sanchez, who was shopping with his family inside the Costco wholesale warehouse in the City of Corona, was ambushed and struck on the head by another individual. The unprovoked attack resulted in an Officer-Involved Shooting.

The attack occurred while Officer Sanchez was holding his one-and-a-half-year-old infant son in one arm, while feeding his son from a free sausage sample stand with the other hand. After receiving the free sample, and still standing in front of the Costco employee that had just served him, Officer Sanchez observed a facial expression of fear and terror on the employee's face. Officer Sanchez heard the employee state, "Oh my God," which caused him to turn his head to the right. As he did so, Officer Sanchez believed he observed the suspect with his right arm extended, pointing a small black compact pistol, like an LCP Ruger .380, approximately an inch from his head. Officer Sanchez believed he had been shot in the head. "I remember seeing a bright flash of white light, hearing a loud gunshot, and then felt intense, searing hot pain on my right side of my head, then everything went black."

The witnesses who were able to see the incident stated that Officer Sanchez was either punched or slapped in the back of the head which caused him to fall to the ground. Although the

statements differ in how Officer Sanchez went to the ground, this corroborates Sanchez's account of being involved in an unprovoked attack.

Witness Dianne Bait said Officer Sanchez fell straight to the ground and struck his head on the concrete. Witness Regina Boladian stated that Kenneth quickly stepped toward Officer Sanchez and forcefully punched him on the right side of his head. The blow caused Officer Sanchez to fall to the floor while holding his child. Witness Boladian also remembered hearing Officer Sanchez state, "Oh my God, he shot me," after he fell to the ground.

Witness Juan Canchon stated he noticed Kenneth staring at Officer Sanchez for four to five seconds while slowly walking toward him. Kenneth suddenly lunged at Officer Sanchez and struck him with a closed fist on the right side of his head.

When Officer Sanchez regained consciousness, after what he stated to be approximately one second, he described feeling intense pain on the right side of his head and that his body felt numb and paralyzed. The suspect was still in the immediate area of Officer Sanchez, who was now on the ground still holding his infant son, and Officer Sanchez still perceived the suspect to be an immediate threat to his life, his son's life, and the lives of the other customers in the Costco. Officer Sanchez unholstered, and drew and exhibited his firearm towards the suspect, believing there was still a threat of death or serious bodily injury to the point where deadly force may be justified.

FINDINGS OF THE BOARD

The majority opinion of the board found Officer Sanchez acted out of approved Department policy when drawing and exhibiting his firearm after being struck in the back of the head. Factors that led to this determination include; dissension among board members over the perceived level of threat that Officer Sanchez was faced with during the tactical situation in the moment he decided to draw his firearm, and the level of injury he sustained as a result of the attack.

STANDARDS OF REVIEW

One of the goals of a Use of Force Review Board is to identify weaknesses and strengths of the incident so that we as a Department can grow and improve in future incidents in accordance with the Department's core values, notably: "Quality through Continuous Improvement." It is important to remember it is not the goal of a Use of Force Review Board to impose or imply what each member thinks they would have done in any situation, but to evaluate the involved officer's actions based on the standard of what is objectively reasonable from the officer's perspective.

Per LAPD Manual Section 556.80 DRAWING OR EXHIBITING FIREARMS: "Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with this policy on the use of firearms."

"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified."

Per LAPD Manual Section 792.05: "While policies provide written guidelines and training reinforces actions consistent with these guidelines, the ultimate question is whether the actions of the involved employees and decision made were objectively reasonable under the facts and circumstances at that time."

Per LAPD Use of Force Tactics Directive No. 1.1, Objectively Reasonable is defined from *Graham v Conner*, 490 U.S. 386 (1989), "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

Per LAPD Use of Force Tactics Directive No. 1.1, officers are authorized to use deadly force to protect themselves or others from what is reasonably perceived to be an imminent threat of death or serious bodily injury. Imminent defined by Black's Law Dictionary as, "near at hand, impending; on the point of happening." Serious bodily injury is defined by California Penal Code Section 243 (f)(4), as including but not limited to **loss of consciousness**, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing and serious disfigurement.

CONCLUSION

The minority opinion respectfully presents the following statements made by Officer Sanchez to FID Detectives over the course of two separate interviews to indicate Officer Sanchez's actions were objectively reasonable and within Department policy when he chose to draw and exhibit his firearm.

Officer Sanchez's statements to FID regarding injuries immediately after being attacked and drawing and exhibiting:

When asked by FID what happened after being hit:

"I don't know I saw black. I was still where... in front of the chicken samples and as I was saying, my son's tiny hands pounding on my right side of my chest, as if he was trying to get my attention and I remember thinking like this is where my story ends, this is where I die."

When asked by FID if he (Sanchez) was standing:

"No at this point I was not. After he was pounding on my chest, I opened my eyes and I remember seeing my son looking down at me... and I couldn't feel my body. My body was numb and absolutely paralyzed. I believed that guy had shot me... During this time, I still believed he was a deadly threat towards me and my son, and at the same time I began to draw my weapon."

When asked by FID Detective Zesati: "Can you describe your injuries to me?"


Officer Sanchez replied: "Severe hearing loss on my right ear, just consistent with like a gun going off. Intense pain – just searing, hot pain consistent with whenever I – through work when I interview a victim of a shooting, they'll describe to me the intense heat. **Loss of consciousness** and just like a sense of – a feeling of paralysis where I'm not able to move."


When asked by FID Detective Rheault: "I see. And did the doctor provide any diagnosis as to [injuries]?"

Officer Sanchez replied, "Blunt force trauma to the head, **loss of consciousness**, and the fall."

Utilizing the above stated legal and Department sources, as well as statements from Officer Sanchez, the minority opinion is indicative of the facts known and perceived at the time of the incident. The assessment by Officer Sanchez of the injury of loss of consciousness due to the attack, when making the decision to draw his firearm, is in accordance with Department policy, specifically; *belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified*. The minority opinion recommends that Officer Sanchez is in accordance with the standard set forth of what is determined objectively reasonable and finds no evidence that Officer Sanchez substantially deviated from approved Department policy. This opinion further recommends an adoption of the finding, Drawing and Exhibiting – In Policy.

Respectfully,


REGINA SCOTT, Deputy Chief
Board Member


Nicholas Grace, Police Officer II
Use of Force Review Peer Member